

Categorical Exclusion (CX)

Right-of-Way for Drainage, Fence, and Wall Improvements on Public Land

Background

NEPA NUMBER: DOI-BLM-NV-S010-2013-0142-CX

On July 16, 1991, a parcel of land containing 12.5 acres was patented (patent 27-91-0098) to the Clark County School District (CCSD) to build a school in Moapa, Nevada. CCSD constructed the Ute Elementary School for the local residents of the Town of Moapa. However, the school may have been constructed slightly over the on the east side, thereby encroaching onto public lands.

BLM Office:

Bureau of Land Management
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130

NVS01000

Lease/Serial/Case File No.:

N-92187

Proposed Action Title/Type:

ROW for drainage, fence, and wall improvements on public land.

Location of Proposed Action:

LOCATION AND LEGAL DESCRIPTION:

Located in Moapa, Nevada. The encroachment area is located on the east side of Ute Perkins Elementary School.

The Legal Description is:

Mount Diablo Meridian, Nevada, T. 14 S., R. 66 E., sec. 34, W½NE¼NW¼SE¼.

Description of Proposed Action:

Description: CCSD has applied for a ROW for drainage, fence, and wall improvements. The improvements are to support Ute Perkins Elementary School which, as mentioned above, may have possibly overstepped the school boundary by approximately 5 to 20 feet on the east side, thereby encroaching onto public lands. CCSD is applying for a ROW to cover the encroachment area. The ROW encroachment area is approximately 5 to 20 feet wide, 330 feet in length, and consists of a drainage area, fencing, and cement wall.

Land Use Plan Conformance

Land Use Plan Name:

Las Vegas Resource Management Plan and Final Environmental Impact Statement (RMP), and the Record of Decision for the Approved Las Vegas Resource Management Plan and Final Environmental Impact Statement.

Date Approved/Amended:

RMP dated October 5, 1998.

The proposed action is in conformance with the Land Use Plan (LUP), even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions) :

The proposed action is in conformance with the applicable RMP because it is clearly consistent with the following LUP decision(s):

ROW Management. Objective: RW-1. "Meet public demand and reduce impacts to sensitive resources by providing an orderly system of development for transportation, including legal access to private inholdings, communications, flood control, major utility transmission lines, and related facilities."

Management Direction. Objective: RW-1-h. "All public land within the planning area, excepted as stated in RW1-c through 1-g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy and Management Act."

Compliance with NEPA:

This is a CX per 516 DM 11.9, NEPA Handbook, Appendix 4 E. (16): "Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

This is a CX per 516 DM 11.9, NEPA Handbook, Appendix 4 E. (12): "Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way."

The site area was previously analyzed in N-48674 for the school, N-87303 for the R&PP soccer field area ((DOI-BLM-NV-S010-2010-0105-EA), and N-91034 for placement of fill and dirt for the soccer park (DOI-BLM-NV-S010-2012-0091-DNA).

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply.

Comments providing substantive new information relevant to the analysis and mitigation measures have been incorporated into the Exhibit A stipulations which are attached to this document.

I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required.

Approval and Contact Information

Authorizing Official:



Vanessa L. Hice
Assistant Field Manager
Division of Lands

9/5/13
Date

Contact Person:

Dorothy J. Dickey, Realty Specialist

Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130
phone: 702-515-5000

Exhibit A

Stipulations for N-92187

1.0 General Stipulations

- 1.1. The right-of-way (ROW) is issued subject to all valid existing rights.
- 1.2. No signs of advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
- 1.3. The ROW shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 1.4. Holder shall mark the exterior boundaries of the ROW with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 1.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this ROW within its authorized limits.
- 1.6. Holder shall maintain the ROW in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 1.7. Holder shall maintain copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying this ROW, encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the ROW, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the ROW, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
- 1.8. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the ROW:

Acceptable data formats are:

Corrected Global Positioning System files with sub-meter accuracy or better, in UTM NAD 83; Zone 11;
ARCGIS export files on a CD ROM, shapefile, geodatabase.

Data may be submitted in any of the following formats:

ARCGIS interchange, shapefile or geodatabase format.
CD ROM in compressed or uncompressed format.

All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact the GIS Department at (702) 515-5000.

2.0 Air Quality

- 2.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the ROW and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the ROW.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

- 2.2. Ensure a dust control permit is obtained through Department of Air Quality (DAQ) for all soil disturbing activity of .25 acres or greater, in the aggregate, and permit stipulations are in compliance for the duration of the activity.
- 2.3. Prior to relinquishment, abandonment, or termination of this ROW, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.
- 2.4. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

3.0 Cultural

- 3.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation. Any decision regarding suitable

mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

4.0 Hazardous Material/Pesticides/Liability

- 4.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the ROW area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.

The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the ROW potentially affecting the ROW of which the Holder is aware.

As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the ROW.

- 4.2. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer.

The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year. Pesticides shall not be permanently stored on public lands authorized for use under this ROW.

- 4.3. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the ROW), the United States against any liability arising from the Holder's use or occupancy of the right-of way, regardless of whether the Holder has actually developed or caused development to occur on the ROW, from the time of the issuance of this ROW to the Holder, and during the term of this ROW. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the ROW.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial

or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the ROW from the time of the issuance of this ROW to the Holder and during the term of this ROW.

- 4.4. Mineral material generated, and not needed for the development of the proposed action within the ROW site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of the excess mineral material.

5.0 Survey Monuments

- 5.1. Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the holder shall be responsible for the survey cost.

6.0 Vegetation/Noxious Weeds/Land surface/Soil/Water/Riparian/Woodland/Forestry

- 6.1. Invasive Species/Noxious Weeds: The proposed action has no new surface disturbance and the developments are already existing. If noxious weeds are found within the ROW, they need to be reported to the BLM Southern Nevada District Office (SNDO) Weed Specialist as soon as possible.
- 6.2. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and contoured evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.
- 6.3. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction will be salvaged and transplanted out of harm's way but still within the right of way. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 6.4. Soil/Water/Riparian/Floodplains: Applicant must follow guidelines set by the Clark County Regional Flood Control District (CCRFCDD) and Clark County specifications for design of drainage systems. If work is to occur in Ephemeral channels, need to consult with Army Corp of Engineers (ACOE) and Nevada Department of Environmental Protection (NDEP).
- 6.5. Fuels/Fire Management: Fire restrictions went into effect May 11, 2013. Normal conformance with seasonal fire restrictions is required. Specific noncompliant activities may

be waived on a case by case basis by a line officer after review and approval by the Fire Management Officer. For the life of the ROW, due diligence is required for maintaining a wildfire defensive space of low to zero burnable vegetation and fuels in this area.

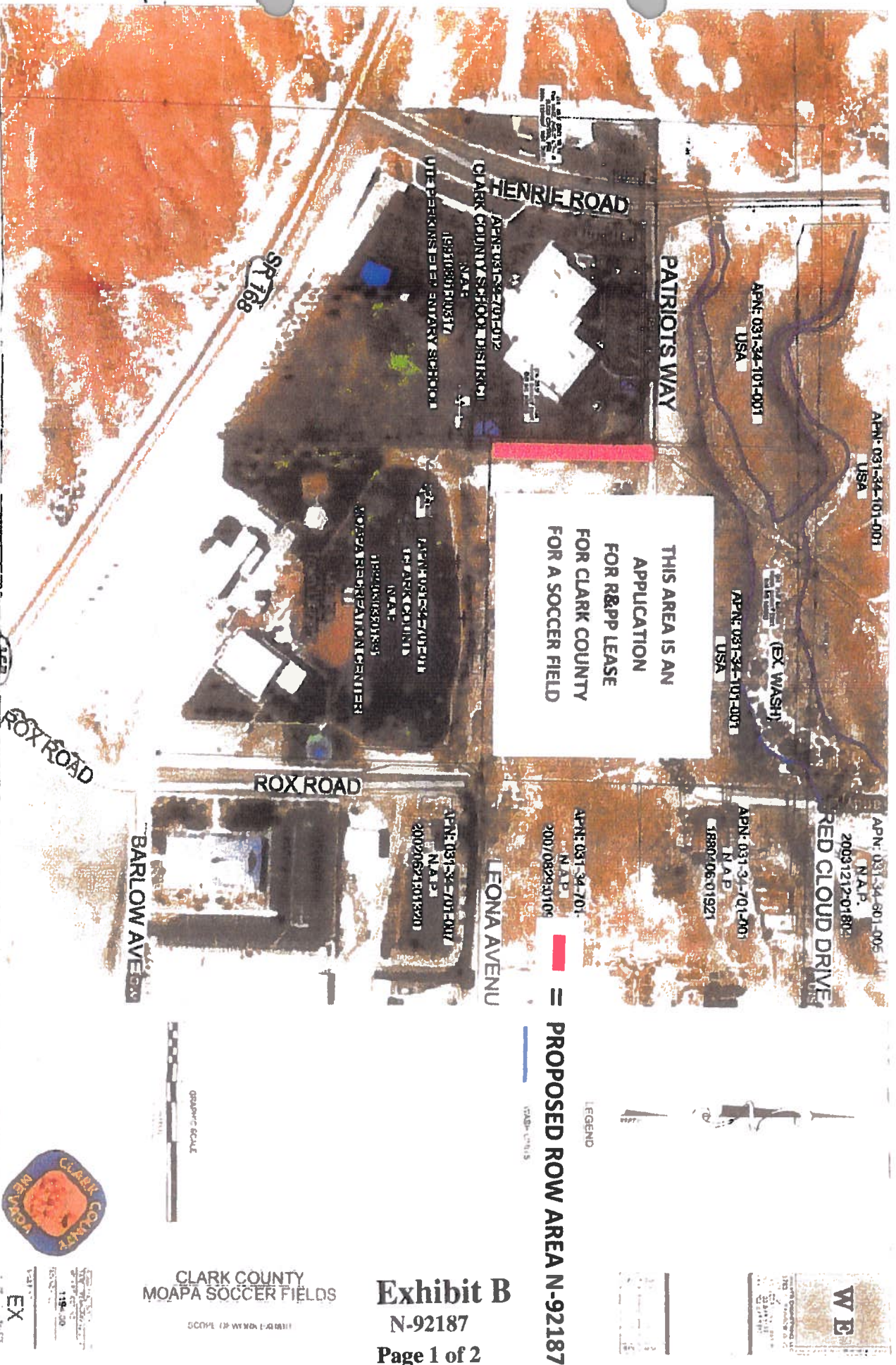
7.0 Visual Resources

- 7.1. The proposed action is located within an already constructed area and meets the objectives for VRM.

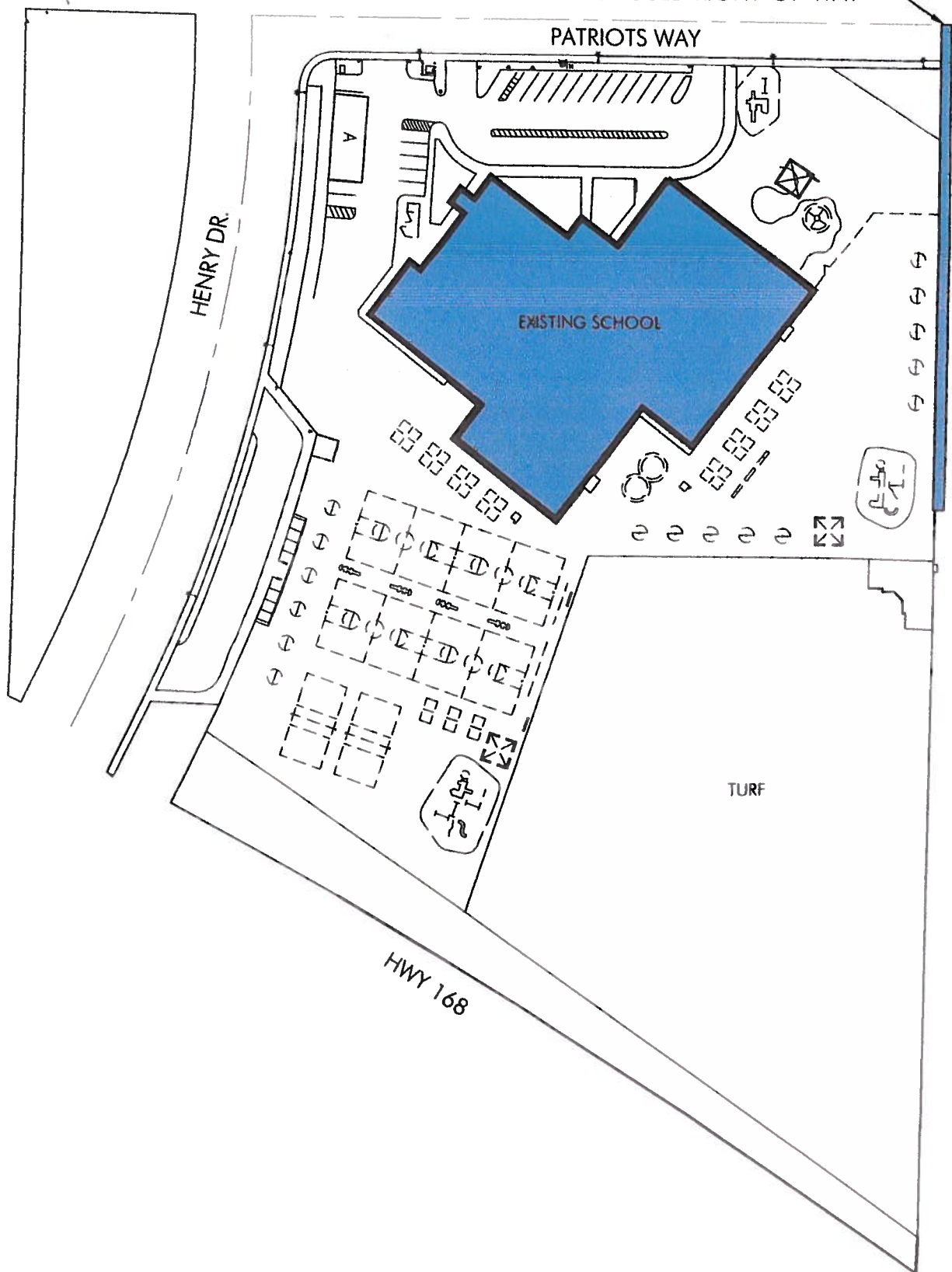
8.0 Fish and Wildlife, Excluding Federally Listed Species

- 8.1. Wildlife species in the general area include small mammals, rodents, birds and reptiles. As this project is an administrative action to legitimize a ROW due to encroachment; no additional new disturbance will occur. The primary direct impact of the trespass on wildlife would have been killing or maiming of ground dwelling animals during construction, mortality of wildlife from vehicular traffic and the loss of habitat.

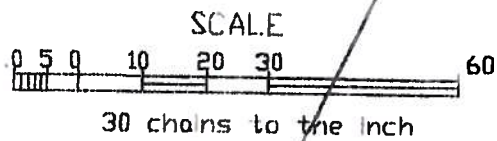
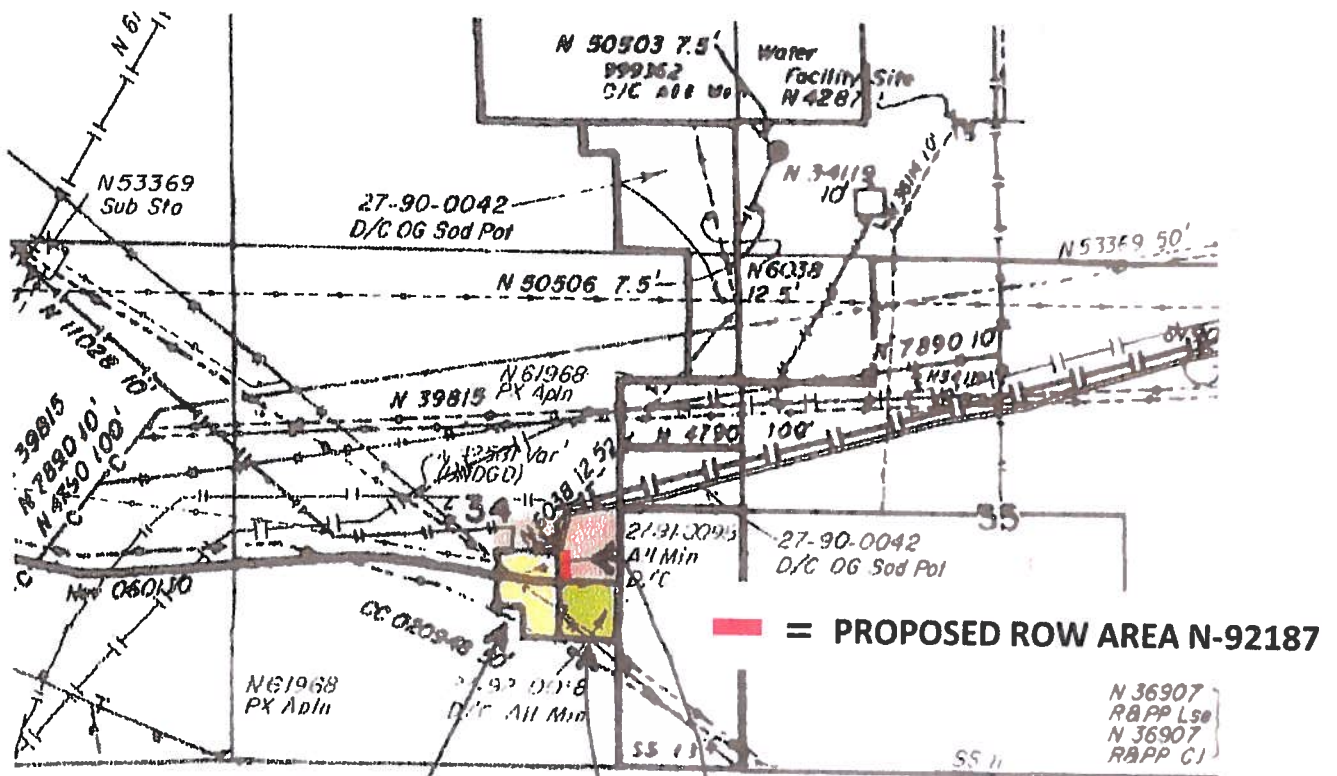
ENCROACHMENT AREA ONTO PUBLIC LAND SHOWN IN RED



N-92187 PROPOSED RIGHT-OF-WAY



MTP PLAT ENLARGED



WARNING

This plat is the Bureau's Record as a graphic display of the town. It does not reflect title changes which may be made by lateral movements of river to the cadastral surveys for a

Exhibit C

N-92187

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